

CHRISTOPHER J. BEEMAN, ESQ. BAR#: 121194  
JAY W. BROWN, ESQ. BAR#: 176079  
CLAPP, MORONEY, BELLAGAMBA and VUCINICH  
A PROFESSIONAL CORPORATION  
6130 Stoneridge Mall Road, Suite 275  
Pleasanton, CA 94588  
(925) 734-0990 Fax: (925) 734-0888

Attorneys for Defendants  
OPERATION DIGNITY, INC., ALEX McELREE, WILLIAM KENNEDY,  
AND LINDA GRIFFIN

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MARK ANTOINE FOSTER,

Plaintiff,

v.

OPERATION DIGNITY, INC., a  
California Non-Profit corporation, ALEX  
McELREE, an individual, WILLIAM  
KENNEDY, an individual, LINDA  
GRIFFIN,

Defendants.

CASE NO.: C075030 MMC

CASE MANAGEMENT CONFERENCE  
STATEMENT

Pursuant to Civil L.R. 16-9, defendants, through their counsel of record, hereby provide the court with the following Joint Case Management Statement. Plaintiff Mark Foster was unable to be reached in order to submit a joint statement.

CASE MANAGEMENT CONFERENCE STATEMENT

1. Jurisdiction and Service

Plaintiff filed this action for violations of the Civil Rights Act of 1968, the Fair Housing and Rehabilitation Act, the United States Housing Act, the Americans With Disabilities Act, the Consumer Fraud and Deceptive Business practices Act, as well as breach of contract and infliction of emotional

1 distress. There is a Motion to Dismiss set in Department 7 before the Honorable Maxine Chesney  
2 pursuant to Colorado River v. United States, 424 U.S. 800 (1976), on the grounds that there is an  
3 identical case pending in the Superior Court of California entitled Foster v. Operation Dignity, Inc.,  
4 et al, Case No. RG06302322. Plaintiff has also filed a second action in Federal District Court Foster  
5 v. Operation Dignity, et al., Case No. C 07-05029 SBA, which is now pending in Judge Armstrong's  
6 court. Operation Dignity has never been served with this complaint, and requests have been made to  
7 Foster for service of this complaint.

8 2. Facts

9 Brief Description of Events Underlying Action

10 Operation Dignity is a non-profit corporation that provides subsidized transitional housing for  
11 veterans. Plaintiff Mark Foster is a U.S. veteran and twice convicted felon. Foster alleges in the  
12 instant matter that he was a resident of 2300 Moonlight Terrace in Alameda California, with a tenancy  
13 ranging from August 17, 2004 through January 31, 2007. He alleges that Operation Dignity was his  
14 landlord, and that the individually named defendants herein were employees of Operation Dignity. In  
15 plaintiff's Federal Court complaint, he references two unlawful detainer actions filed by the  
16 defendants, which form the basis of the Federal Court action. The first is Alameda County Superior  
17 Court Case No. AG06262593, which was filed on March 30, 2006 which sought recovery of the  
18 premises from Mr. Foster based on his non-participation in case management services. The second  
19 is Case No. AG06279183, which sought recovery of the premises for non-payment of rent. Based upon  
20 a negotiated stipulation between the parties, Foster vacated the premises on January 31, 2007.

21 In plaintiff's State court action, Foster v. Operation Dignity, et al, Case No. RG06302322, filed  
22 February 26, 2007, he makes identical factual allegations, but limits the action to the first unlawful  
23 detainer action, Alameda County Superior Court Case No. AG06262593, which was filed on March  
24 30, 2006. In that complaint, Foster alleges that he was a resident of 2300 Moonlight Terrace,  
25 Apartment A in Alameda, taking possession on August 17, 2004, and that Operation Dignity was his  
26 landlord. Foster addresses again the very same unlawful detainer actions addressed in his Federal  
27 complaint. Foster's State court action sets forth seven causes of action for retaliatory eviction, fraud,  
28

1 breach of covenant of good faith and fair dealing, breach of contract and infliction of emotional  
 2 distress, all similar causes of action to those alleged in his Federal action. Foster's second complaint  
 3 addresses the second unlawful detainer action, The second is Case No. AG06279183, which sought  
 4 recovery of the premises for non-payment of rent, but essentially alleges the same facts and causes of  
 5 action as the first state court action. Since both State court complaints arose out of the same tenancy,  
 6 but two separate unlawful detainer actions, the two actions were consolidated, with the RG06302322  
 7 being the controlling case as it is the oldest action.

8 The instant Federal Court action is Foster's third such action filed (aside from the two  
 9 consolidated state court matters addressed above.) Foster has now filed fourth complaint in Federal  
 10 Court, Foster v. Operation Dignity, et al., Case No. C 07-05029 SBA, which is now pending in Judge  
 11 Armstrong's court. Operation Dignity has never been served with this complaint, and requests have  
 12 been made to Foster for service of this complaint.

### 13 3. Legal Issues

#### 14 Defendant's Contentions

15 The retaliatory eviction doctrine is founded on the premise that a landlord may normally evict  
 16 a tenant for any reason or for no reason at all, but a landlord may not evict for an improper reason.  
 17 (Barela v. Superior Court (1981) 30 Cal.3d 244, 249.) Retaliatory eviction occurs when a landlord  
 18 exercises his legal right to terminate a tenancy but with a motive of retaliating against a tenant who  
 19 has exercised a legal right. (Four Seas Inv. Corp. v. International Hotel Tenants' Assn. (1978) 81  
 20 Cal.App.3d 604, 610.) Although it may be plead as an affirmative defense in an unlawful detainer  
 21 matter, it has been extended to allow an independent cause of action against the landlord for actual  
 22 and punitive damages. (Aweeka v. Bonds (1971) 20 Cal.App.3d 278, 281.)

23 The retaliatory eviction doctrine, aside from its common law origins, has been codified in Civil  
 24 Code section 1942.5. Essentially, if the lessee is not in default in the payment of rent, the lessor may  
 25 not in retaliation against lessee because of the lessee's exercise of rights:

- 26 - Recover possession of the dwelling in any action or proceeding;
- 27 - Cause the lessee to quit involuntarily;

- 1 - Increase the rent, or;
- 2 - Decrease any services within 180 days after the latest of certain specified dates

3 A lessor may, however, recover possession of a dwelling and do any of the other acts described  
4 in Section 1942(a) or (c), above, if the notice of termination, rent increase or other act, and any  
5 pleading or statement of issues in an arbitration states the ground on which the lessor in good faith  
6 seeks to recover possession, increase rent or do any of the other acts described. If the statement is  
7 controverted, the lessor has the burden of establishing its truth at the trial.

8 Civil Code section 1942.5 Subsection (e) states:

9 "Notwithstanding subdivisions (a) to (d), a lessor may recover possession of a dwelling and  
10 do any of the other acts described in subdivision (a) within the periods prescribed therein, or within  
11 subdivision (c), if the notice of termination, rent increase, or other act, and any pleading or statement  
12 of issues in an arbitration, if any, states the ground upon which the lessor, in good faith, seeks to  
13 recover possession, increase rent, or do any of the other acts described in subdivision (a) or (c). If the  
14 statement is controverted, the lessor shall establish its truth at the trial or other hearing.

15 Subsection (f) provides for damages as follows:

16 (1) The actual damages sustained by the lessee.

17 (2) Punitive damages in an amount of not less than \$100 nor more than \$2000 for reach  
18 retaliatory act where the lessor or agent has been guilty of fraud, oppression, or malice with respect  
19 to that act.

20 Subsection (g) provides for reasonable attorney's fees to the prevailing party.

21 It is difficult to follow plaintiff's logic, but he apparently contends that he was discriminated  
22 against in the first alleged wrongful eviction because of his status as a homeless veteran on public  
23 assistance. It is noteworthy that virtually every tenant of Operation Dignity would be in the same class,  
24 and rather than discriminating against these individuals, Operation Dignity was organized and is run  
25 to assist this class of people. The first unlawful detainer action did not result in plaintiff vacating the  
26 premises. Retaliatory eviction on this basis lacks merit.

27 Plaintiff then apparently alleges that the second unlawful detainer action, which was based  
28

1 upon plaintiff's admitted failure to pay rent for four months, was filed against him because plaintiff  
2 had chosen to stand up for his rights. The reality is that plaintiff had not paid rent since March of 2006,  
3 as he was required to do pursuant to his lease. Procedurally, plaintiff stipulated to moving out of his  
4 apartment pursuant to the second unlawful detainer action, so it seems disingenuous to argue that he  
5 was forced out, when he had the ability to stay and fight if he truly believed that he was entitled to  
6 continue his residency.

7 4. Motions

8 There is a Motion to Dismiss/Stay pending in this department on January 11, 2008 at 9:30 a.m.

9 5. Amendment of Pleadings

10 No further amendment of pleadings are required.

11 6. Evidence Preservation

12 Pre-trial discovery has been underway for quite some time in the State of California Superior  
13 Court actions. All documents and discovery have been exchanged. Plaintiff is in possession of all  
14 documents which are in defendants' possession.

15 7. Disclosures

16 Defendants submitted their initial disclosures in conjunction with this case management  
17 conference statement, however, witnesses, documents and insurance information have been supplied  
18 to plaintiff Foster in the underlying state court action.

19 8. Discovery

20 Pre-trial discovery has been ongoing in the underlying State court actions. A mediation also  
21 took place in November 2007.

22 9. Class Actions

23 There are no class certification hearings anticipated at this time.

24 10. Related Cases

25 As set forth above, there is a consolidated action in the Superior Court of California, County  
26 of Alameda, as well as the related Federal action referenced above assigned to Judge Armstrong.

27 11. Relief

1 Plaintiff seeks compensatory and punitive damages.

2 Defendants deny liability. Pursuant to their Motion to Dismiss/Stay, defendants request that  
3 this court either dismiss this action with prejudice, or stay this matter pending the outcome of the state  
4 court matter. Defendants also request that this court ultimately consolidate this matter with Case No.  
5 C 07-05029, and dismiss/stay that matter as well.

6 12. Settlement and ADR

7 The parties have already engaged in a full day mediation in the State court matter. Plaintiff  
8 made an initial demand of \$10,000,000, and ended at the end of an 8-hour session at with a \$250,000  
9 demand.

10 As for discovery, the parties have engaged in written discovery in the underlying state court  
11 action, including the deposition of the plaintiff. Defendants anticipate written discovery to the  
12 plaintiff on his allegations of violation of Federal law.

13 13. Consent to Magistrate Judge for All Purposes

14 The parties have not consented to the assignment of this case to a United States Magistrate  
15 Judge for trial.

16 14. Other References

17 The case is not suitable for reference to binding arbitration, special master, or the judicial panel  
18 on multi-district litigation.

19 15. Narrowing of Issues

20 None at this time.

21 16. Expedited Schedule

22 The parties do not request expedited scheduling.

23 17. Scheduling

24 Assuming defendants' Motion to Dismiss/Stay is denied, defendants propose the following  
25 schedule.

26 a. A further case management conference to be scheduled at the pleasure of the court.

27 b. Discovery shall be subject to Federal Rules of Civil Procedure and Local Rules, subject  
28

1 to any provision below.

2 c. Non-Expert discovery cut-off shall be on July 1, 2008.

3 d. Expert disclosures and reports shall be exchanged on or before September 1, 2008.

4 Disclosure of rebuttal experts shall be on October 1, 2008. Parties shall conform to rule 26(a)(2).

5 e. Expert Discovery cut-off shall be on November 1, 2008.

6 f. December 1, 2008 is the last day to file any dispositive motions.

7 g. Pre-Trial Conference shall be held at the court's discretion.

8 h. The trial shall be set at the court's discretion.

9 18. Trial

10 Defendants demand a jury trial.

11 19. Disclosure of Non-Party Interested Entities or Persons

12 No other persons or entities are required to be disclosed by the parties at this time.

13 20. Other matters

14 None.

15 DATED: January 2, 2008

CLAPP, MORONEY, BELLAGAMBA  
and VUCHNICH

17  
18 By: \_\_\_\_\_

CHRISTOPHER J. BEEMAN, ESQ.

Attorneys for Defendants OPERATION DIGNITY, INC.,  
ALEX McELREE, WILLIAM KENNEDY, AND

LINDA GRIFFIN

**Foster v. Operation Dignity, Inc., a California Non-Profit Corp et al.**  
U.S.D.C., Northern Dist. OF California, C075030 MMC

**PROOF OF SERVICE**

I hereby certify that I sent by regular U.S. Mail, the following:

CASE MANAGEMENT STATEMENT

Mark Antoine Foster In Pro Per  
200 Corpus Christie Road, #A,  
Alameda, CA 94501

Executed on January 4, 2008 at Pleasanton, California. I declare under penalty of perjury  
under the laws of the State of California that the foregoing is true and correct.

S/S

---

ROCHELLE BECKER